

# MICHAEL BEST

& FRIEDRICH LLP

---

## MEMORANDUM

---

**TO:** Mark McDermid  
**FROM:** Linda H. Bothert  
**DATE:** November 30, 2009  
**SUBJECT:** EPA Audit Policy and DNR Environmental Compliance Audit Program:  
Procedural Differences

---

For purposes of discussion at the Green Tier Advisors meeting on December 4, 2009, you asked me to provide a summary sheet of the major procedural differences between the EPA Audit Policy and the DNR Environmental Compliance Audit Program. While there are many similarities between the two, listed below are the primary procedural differences I've identified in working with these two programs.

### **EPA Audit Policy (65 Fed. Reg. 70; 4/11/2000):**

1. applies to violations discovered through an environmental audit or as part of a compliance management system
  - a. requires a subsequent audit to be conducted within established time period in order to satisfy *Audit Policy Criterion 1: Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System*
  - b. excludes "repeat violations". i.e., specific or closely related violation within prior three years at same facility or within prior five years as part of pattern at multiple facilities owned/operated by same entity
2. requires disclosure report to be submitted to EPA within 21 days of discovery of violation
3. requires corrective actions to be completed within 60 days of discovery of violation
4. corrective action extensions may be requested; no maximum limit on length of extension
5. EPA can waive civil penalties for either/both economic benefit of delay and gravity of offense; EPA can also decide to forego criminal prosecution
6. EPA calculates avoided penalties and provides that information in a Notice of Final Determination

### **DNR Environmental Compliance Audit Program (Wis. Stat. s. 299.85):**

1. applies to violations discovered through an environmental audit
  - a. entity must give DNR notice at least 30 days prior to conduct of audit

b. excludes "repeat violations" – i.e., violation of same requirement at same facility committed in same manner as violation previously reported by entity, unless violation is caused by a change in business processes or activities

2. requires disclosure report to be submitted to DNR within 45 days of receipt by entity of audit report (final written findings)

3. requires corrective actions to be completed within 90 days of submittal of disclosure report

4. corrective action extensions (called compliance schedules) may be requested/approved:

a. for compliance schedules of more than 90 days, public notice and opportunity for comment is required

b. maximum compliance schedule is 12 months unless DNR secretary determines longer schedule is necessary applying factors set out in statute (s. 299.85(6)(b))

5. DNR can waive civil penalties; if not waived, maximum citation is \$500 per violation regardless of number of days of violation; DNR and DOJ in consultation can determine not to pursue criminal action if otherwise applicable

6. DNR acknowledges receipt of report, but does not calculate/advise of avoided penalties

Q:\FIRM\099999\3246\B2111459.0